

Honorable Thomas S. Zilly

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

VENICE PI, LLC,

Plaintiff,

v.

MARY ELLEN AVELAR, an individual; and
STACY FOSTER, an individual,

Defendants.

Civil Action No. 17-cv-990TSZ

PLAINTIFF'S NOTICE OF VOLUNTARY
DISMISSAL OF DEFENDANTS

In "John Doe" copyright cases of the present type, this Court has previously required a plaintiff to name a defendant once the account name for the IP address is known, stating that the plaintiff can seek leave to amend later if discovery shows it to be necessary. *E.g., Cobbler v. James*, Case No. 15-cv-1430TSZ (January 26, 2016, Dkt. 16); *see also Dallas Buyers Club v. Does*, Case No. 15-cv-134RAJ (and others) (Dkt. 48). Requests to conduct more particularized discovery before naming a defendant have been denied. At the time this action was filed, Plaintiff proceeded in this fashion, with the understanding that the complaint satisfied all pleading requirements.

After this action was filed, the Court issued an order precluding Plaintiff from conducting any discovery while also ordering Plaintiff to provide an offer of proof with respect to several assertions in the case. (E.g., Dkts. 37, 46, 67) Plaintiff responded to this order, and others, and sought leave to resume the proceedings. (E.g., Dkts. 40, 48, 65, 68). Since the time this action was

1 filed, Plaintiff has not been allowed to conduct discovery beyond the service of a subpoena to
 2 secure the name of the ISP account holder.

3 More than a year after the present complaint was filed, the Ninth Circuit issued a decision
 4 which this Court describes as requiring the pleading in the complaint of “something more” to tie
 5 the account holder to the infringing conduct. *Cobbler Nevada, LLC v. Gonzales*, 901 F.3d 1142
 6 (9th Cir. 2018). Plaintiff has not been afforded any opportunity to timely conduct discovery into
 7 such matters, and believes that in cases of this type a plaintiff should be allowed to gather facts
 8 using Court-sanctioned discovery while it is still ripe. In this case, however, given the passage of
 9 more than two years since the filing of the complaint, Plaintiff believes any meaningful
 10 opportunities to obtain such discovery are now lost.

11 Mindful of the foregoing and in an effort to conserve judicial and party resources, pursuant
 12 to Rule 41(a)(1)(A)(i), Plaintiff hereby dismisses its claims against Defendants Avelar and Foster
 13 without prejudice.

14 s/ David A. Lowe, WSBA No. 24,453

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